

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CYNTHIA MAHON and GARY  
MARKLEY,

No. 2:03-cv-01763-MCE-DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

CROWN EQUIPMENT CORPORATION,  
dba CROWN LIFT TRUCKS, and  
DOES 1 through 50, inclusive,

Defendants.

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On December 20, 2007, this Court denied Crown Equipment Corporation's ("Defendant") Motion for Partial Summary Judgment on the issue of punitive damages. Mem. & Order, December 20, 2007. Defendant now moves the Court to reconsider that Order.<sup>1</sup>

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<sup>1</sup> Because oral argument will not be of material assistance, the Court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

## BACKGROUND

This lawsuit arises out of injuries Cynthia Mahon ("Plaintiff") sustained while operating a stand-up forklift designed and manufactured by Defendant. Plaintiff claims, *inter alia*, that Defendant is liable for punitive damages for failing to place doors on its forklifts, rendering them defective and dangerous to consumers. Defendant counters that doors would increase the risk of more serious injury and that Defendant's decision not to install doors cannot, as a matter of law, provide the requisite basis for punitive damages.

This Court denied Defendant's Motion for Partial Summary Judgment as to Plaintiff's punitive damages claim on December 21, 2007. On January 23, 2008, in a similar "no door" punitive damage claim against Defendant, a United States District Court in Missouri granted Defendant's Motion for Partial Summary Judgment. On the basis of this decision, and supplemental clarifying information, Defendant has filed this Motion for Reconsideration. For the following reasons, this Motion is denied.

## STANDARD

Although the Federal Rules of Civil Procedure do not provide for a "motion to reconsider," a court may reexamine any non-final order at the urging of a party under Rule 54(b). A court order resolving fewer than all of the parties' claims is "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

1 Fed. R. Civ. P. 54(b). Nonetheless, a court should not revisit  
2 its own decisions unless extraordinary circumstances show that  
3 its prior decision was wrong. Christianson v. Colt Indus.  
4 Operating Corp., 486 U.S. 800, 816 (1988). This principle is  
5 generally embodied in the law of the case doctrine, which  
6 counsels against reopening questions once resolved in ongoing  
7 litigation. Pyramid Lake Paiute Tribe of Indians v. Hodel, 882  
8 F.2d 364, 369 (9th Cir. 1989)(citing 18 C. Wright, A. Miller & E.  
9 Cooper, Federal Practice and Procedure § 4478 at 788-89). Where  
10 reconsideration of a non-final order is sought, the court has  
11 "inherent jurisdiction to modify, alter or revoke it." United  
12 States v. Martin, 226 F.3d 1042, 1048-49 (9th Cir. 2000). The  
13 major grounds that justify reconsideration involve an intervening  
14 change of controlling law, the availability of new evidence, or  
15 the need to correct a clear error or prevent manifest injustice.  
16 Pyramid, 882 F.2d at 369 (quoting 18 C. Wright, A. Miller & E.  
17 Cooper, Federal Practice and Procedure § 4478 at 790).

18 In a motion for reconsideration, the moving party must show  
19 "new or different facts or circumstances . . . which did not  
20 exist or were not shown upon such prior motion, or what other  
21 grounds exist for the motion." E.D. Cal. Local R. § 78-230(k).  
22 "To succeed in a motion to reconsider, a party must set forth  
23 facts or law of a strongly convincing nature to induce the court  
24 to reverse its prior decision." Ketchum v. City of Vallejo,  
25 No. Civ. S-05-1098 RRB JFM, 2007 WL 4356137, at \*1 (E.D. Cal.  
26 Dec. 11, 2007).

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1 A motion for reconsideration "may not be used to raise arguments  
2 or present evidence for the first time when they could reasonably  
3 have been raised earlier in the litigation." Carroll v. Nakatani,  
4 342 F.3d 934, 945 (9th Cir. 2003).

5

6 **ANALYSIS**

7 **1. No Change of Controlling Law**

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9 Defendant does not base its Motion for Reconsideration on an  
10 intervening change of controlling law. The only intervening case  
11 law Defendant cites is a United States District Court order  
12 granting Crown's Motion for Partial Summary Judgment. Martin v.  
13 Crown Equip. Corp., No. 05-3407-CV-S-GAF (W.D. Mo. Jan. 23,  
14 2008). In that case, the plaintiff brought an action against  
15 Defendant after sustaining serious injuries when his left leg  
16 extended outside the open operator compartment of a Crown  
17 forklift and was crushed between the forklift and a concrete  
18 post. Id. at 2. The plaintiff sought punitive damages for the  
19 door-less design under negligence and strict liability theories.  
20 Id. at 11. The District Court found that the plaintiff in that  
21 case could not meet the applicable standard under Missouri state  
22 law. Id. at 11-15. This Court's original Order relied on Ninth  
23 Circuit case law and a Missouri district court's decision  
24 regarding Missouri state law does not compel this Court to amend  
25 its decision.

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1           **2. No New Evidence**

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3           Defendant has not presented any new evidence. Defendant  
4 puts forward several arguments previously raised in the Motion  
5 for Partial Summary Judgment and Reply in Support of that Motion.  
6 Defendant also "clarif[ies]" perceived confusion in this Court's  
7 Memorandum and Order denying Defendant's Motion for Partial  
8 Summary Judgment. Neither the rehashed arguments, nor the  
9 clarifications, constitute new evidence.

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11           **3. No Clear Error or Manifest Injustice**

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13           Defendant's principle argument is that this Court's decision  
14 denying Defendant's Motion for Partial Summary Judgment was clear  
15 error that resulted in manifest injustice. Defendant claims it  
16 was faced with a "Catch-22" as to whether to install doors on its  
17 forklifts insofar as Defendant maintains it could be subject to  
18 punitive damages under either design choice. In its original  
19 Motion for Partial Summary Judgment, Defendant discussed its  
20 patented entry bar system. This system slows the forklift and  
21 sounds an alarm if the operator places his or her foot outside  
22 the forklift's running lines. In the December 20, 2007, Order  
23 this Court stated the "evidence [Defendant] presents regarding  
24 the entry bar system indicates additional possibilities in  
25 preventing operator injuries." Mem. & Order 8, Dec. 20, 2007.  
26 As Defendant points out, the forklift Plaintiff was operating had  
27 an entry bar.

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1 However, the "additional possibilit[y]" of an entry bar alone was  
2 not dispositive of the decision to deny Defendant's Motion for  
3 Partial Summary Judgment and therefore does not support  
4 Defendant's Motion for Reconsideration.

5 Defendant next asserts this Court erroneously implied  
6 Defendant was obligated to prevent operator injuries to avoid  
7 punitive damages. This Court agrees Defendant was not required  
8 to become the insurer of the safety of the product's user.  
9 Nonetheless, the existence of other safety precautions and  
10 Defendant's knowledge of them are relevant to the determination  
11 as to whether Defendant acted with "willful and conscious  
12 disregard of the rights or safety of others." Cal. Civ. Code  
13 § 3294(c)(1).

14 Defendant claims this Court mistakenly characterized the  
15 facts of McEuin v. Crown Equipment Corp., 328 F.3d 1028 (9th Cir.  
16 2003), as "strikingly similar" to those of this case. Mem. &  
17 Order 7, Dec. 20, 2007. In McEuin, the Ninth Circuit upheld a  
18 jury award of punitive damages against Defendant for defective  
19 design because the operator cabin of a Crown forklift was not  
20 enclosed with a door. Defendant claims "[t]he only two  
21 similarities [between McEuin and the case at bar] are that both  
22 involved lower left leg injuries and both forklifts had open  
23 operator compartments." The only material differences between  
24 the two cases are: (1) that the McEuin forklift did not have an  
25 entry bar; and (2) that, in McEuin, the court found that "Crown  
26 attempted to conceal that the 30RC [model forklift] was defective  
27 by misleading Price-Costco as to the requirement of industry  
28 standards." McEuin, 328 F.3d at 1036.

1 Plaintiff has not alleged Defendant made any such misleading  
2 statements in this case. In addition to the lack of an entry  
3 bar, Defendant notes "other design differences" between the 30RC  
4 forklift in McEuin and the RC3000 forklift. Defendant does not,  
5 however, indicate how other design differences alter the outcome  
6 on this issue since both forklifts had open operator  
7 compartments. Defendant attempts to distinguish McEuin, stating  
8 McEuin contended that he diverted his attention in order to check  
9 on the position of his cargo and extended his left leg outside  
10 the operator's cabin as he leaned toward the front of the  
11 forklift. However, in McEuin, the plaintiff "inadvertant[ly]  
12 extend[ed] ... his foot to maintain his balance." Id. at 1031.  
13 In this case, Plaintiff's left foot came out of the operator  
14 compartment after she attempted to engage the foot brake and lost  
15 her balance. Mem. & Order at 11-14, Dec. 20, 2007. In both  
16 cases, the plaintiff's left foot was crushed after the forklift  
17 operator extended it out of the moving vehicle in an attempt to  
18 maintain balance.

19 The facts of both McEuin and Plaintiff's case are indeed  
20 strikingly similar. Both involve forklifts with open operator  
21 compartments. Both accidents occurred when the forklift was  
22 traveling in reverse. Each operator's left foot extended outside  
23 the vehicle after the operator lost balance.

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1 As a result, each operator's left foot was crushed. This Court  
2 did not err in relying, in part, on the McEuin decision to  
3 support a denial of Defendant's Motion for Partial Summary  
4 Judgment.<sup>2</sup>

5 Finally, Defendant contends that even if this case is  
6 similar to McEuin, substantive due process requires that  
7 Defendant not be punished twice for the same conduct. Defendant  
8 cites State Farm Mutual Automobile Insurance Co. v. Campbell, 538  
9 U.S. 408, 416 (2003) in support of this claim. In that case, the  
10 Supreme Court found that an award of \$145 million in punitive  
11 damages on \$1 million in compensatory judgment violated due  
12 process. State Farm does not, as Defendant alleges, prevent  
13 multiple punitive damages awards against a defendant for a single  
14 course of conduct. Rather, the Court stated that punitive  
15 damages calculations may not include "other parties' hypothetical  
16 claims against a defendant," because this would "create[] the  
17 possibility of multiple punitive damages awards for the same  
18 conduct." Id. at 423. The Supreme Court acknowledged that, in  
19 the context of punitive damages, "nonparties are not bound by the  
20 judgment some other plaintiff obtains." Id. Therefore, multiple  
21 punitive damages awards are prohibited only when they include  
22 calculations of other parties' hypothetical claims.

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26 <sup>2</sup> This Court notes that McEuin, the Missouri District Court  
27 case, and the present case all involve Crown forklifts with open  
28 operator compartments. In all three cases, the operator, whose  
left foot was crushed when it extended out the left side of the  
operator compartment, sued Defendant for defective design.

1 Defendant cites no California law prohibiting plaintiffs  
2 suffering similar injuries from receiving punitive damages awards  
3 resulting out of the same products liability claim.

4 This Court recognizes the inaccuracy in citing Defendant's  
5 patented entry bar system as an "additional possibilit[y]" of a  
6 safety device when Plaintiff's forklift had such a system.  
7 However, this Court did not rely exclusively on a lack of an  
8 entry bar system in deciding to deny Defendant's Motion for  
9 Partial Summary Judgment. That Plaintiff's forklift was actually  
10 equipped with this system does not alter this Court's conclusion  
11 that the denial of Defendant's Motion was proper. Denying the  
12 Motion was not "clear error," and allowing that decision to stand  
13 does not result in manifest injustice to Defendant.

14

15 **CONCLUSION**

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17 In support of its Motion for Reconsideration, Defendant has  
18 not reported an intervening change of controlling law or  
19 presented any new evidence. This Court does not find any error  
20 in its prior Order, nor does it find that Defendant will suffer  
21 any manifest injustice. Accordingly, Defendant's Motion for  
22 Reconsideration is DENIED.

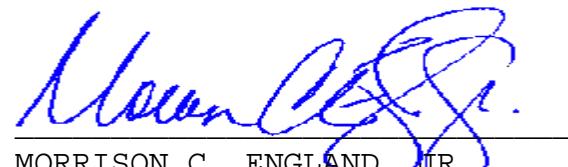
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IT IS SO ORDERED.

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Dated: May 8, 2008

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MORRISON C. ENGLAND, JR.  
27 UNITED STATES DISTRICT JUDGE  
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